

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
OF THE STATE OF WASHINGTON

IN THE MATTER OF THE)
ASSESSMENT OF A PENALTY)
AGAINST THE AGNEW LUMBER)
COMPANY BY THE SOUTHWEST)
WASHINGTON AIR POLLUTION)
AUTHORITY)
_____)

DOCKET NO. HB 70-18

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT

This matter came on to be heard before the Pollution Control Hearings Board, with a member of the Board, Mr. Walt Woodward, sitting as Presiding Officer on the 5th day of February 1971. The appellant, Agnew Lumber Company, was represented by its attorney, Mr. J. M. Cunningham, and the Southwest Washington Air Pollution Authority was represented by Mr. Edward K. Taylor, Executive Director and Mr. James Ladley, its attorney.

Witnesses were sworn and testified on behalf of both the Appellant and the Respondent, and arguments were presented by respective counsel.

There seems to be no real dispute as to what happened, and the evidence supports the following

FINDINGS OF FACT

I.

On the morning of November 17, 1970, employees of the Agnew Lumber Company built a small, hot-burning fire in the open, near the construction site of a new veneer plant, on the property of that company. The purpose was to warm the hands of the workmen on a very

cold morning. There was no testimony that this was an attempt to burn scrap material to get rid of it.

II.

We further accept as statement of fact, the testimony of William Prastka of the Southwest Washington Air Pollution Authority that the fire was about 20 feet from the newly constructed veneer plant, was approximately four feet in diameter, made up of lumber scraps about a foot high. It was hot and clean. He was informed that the fire was for warming purposes, and on his request, the fire was extinguished.

CONCLUSIONS OF LAW

I.

The fire was technically a violation of Sec. 4.01 of Regulation 1 of the Southwest Washington Air Pollution Control Authority which reads:

Section 4.01 - Open Fires

No person shall ignite, cause to be ignited, permit to be ignited, or suffer, allow or maintain any open fire within the jurisdiction of the authority, except as provided in this Regulation.

II.

That the fire did not fall within any of the exceptions provided in this regulation, which were as follows:

- (a) The following fires are excepted from provisions of this regulation:
 - (1) Fires set only for recreational purposes and cooking of food for human consumption, provided no nuisance is created;
 - (2) Any fire specifically exempt under Section 42 of chapter 238, RCW 70.94.250.

The section then provides for open burning to be done under permits under (b) and (c) and concludes with:

- (d) It shall be (prima facie) evidence that the person who owns or controls the property upon which an open fire, prohibited by this regulation, occurs, has caused or allowed said open fire. (Underscoring ours.)

III.

That the maximum civil penalty which can be imposed under the statutes and regulations for a single offense is \$250.00.

JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, the judgment of the Pollution Control Hearings Board is:

That the fire in question was a technical violation of Section 4.01 of Regulation 1 of the Southwest Washington Air Pollution Control Authority, which, under the circumstances, warranted little more than a reprimand; that the imposition of the maximum penalty of \$250.00 was grossly excessive, and that penalty is set aside and the matter remanded to the Southwest Washington Air Pollution Authority for the imposition of a civil penalty commensurate with the offense, if any penalty be deemed necessary.

DONE at Olympia, Washington this 10th day of March, 1971.

POLLUTION CONTROL HEARINGS BOARD


MATTHEW W. HILL, Chairman


WALT WOODWARD, Member


JAMES T. SHEEHY, Member

ADDENDUM

Since the decision in this case is generally favorable to the Agnew Lumber Company, this Board desires to make it very clear that it was in no way influenced by the closing argument of counsel for that company "that unless this Air Pollution Control Authority is put in its place at a hearing such as this, why, he is going to abandon his whole veneer plant in Centralia."

While this Board should always be aware of the economic consequences of its decisions, it is not amenable to coercion.